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EXAMINER
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KLEBE, GERALD B

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 11/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. <b>09/922,237</b>	Applicant(s) <b>Rondeau et al.</b>	
Examiner <b>Gerald Klebe</b>	Art Unit <b>3618</b>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on Aug 6, 2001

2a)  This action is FINAL.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 1-47 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1, 2, 5-14, 17-38, and 40-47 is/are rejected.

7)  Claim(s) 3, 4, 15, 16, and 39 is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some\* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1)  Notice of References Cited (PTO-892)      4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      5)  Notice of Informal Patent Application (PTO-152)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_      6)  Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Specification Objections - Minor Informalities***

1. The specification is objected to for the following informalities:

The specification is found to refer to the same entity by different terminology; a consistent terminology is required for clarity. The specification should be scrutinized for these types of informalities and corrections made where indicated. Some examples are:

Page 8, line 14 refers to item 222 as “cross-over portion”; whereas page 9, line 11 refers to the same item number 222 as “raised support portion”;

Page 13, line 22 refers to item 40 as “support bars”; whereas page 14, line 2 refers to item 40 as “support arms”.

Appropriate correction or clarification is required.

### ***Claim Rejections - 35 USC Sec. 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 20-24 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 20, in line 4 recites “the at least one mud guard”; there is insufficient antecedent basis for this limitation in the claim;

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Claim 26, lines 4-5 recite the limitation: "wherein the raised support portions are supported by the main frame and not the bumper." It is not clear from the recitation of the claim whether it is intended to mean --wherein the raised support portions are supported by the main frame and are not supported by the bumper--, or whether the bumper, also, is not being supported directly from the main frame.

Appropriate clarification or correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1, 2, 5, 13, 14, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Sun (US 5474483).

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Sun discloses (**re: claims 1 and 13**) a vehicle (Fig 1) with a plurality of wheels and a fender structure therefor (the fenders not separately numbered, but taken as the sides and curved skirt-like structure running around the entire bottom periphery of the vehicle ), comprising: a right fender portion positionable over a right wheel ( the right side is shown in Fig 3); a left fender portion (Fig 1) associated with the right fender portion and positionable over a left wheel, wherein at least one of the right fender portion and the left fender portion includes a support portion (taken as the top periphery of the sides) designed as a load-bearing surface (refer Fig 8) that is defined at least in part by a top surface of at least one of the left and right fender portions; and (**re: claims 2 and 14**) further comprising a storage compartment (Fig 3, item 12) formed in the support portion with an opening through which items may be placed into the storage compartment (refer col 2, lines 19-21); and a cover (40) positionable over the opening; and (**re: claims 5 and 17**) wherein the right fender portion, the left fender portion and the support portion are integrally formed with one another as a single unit (as shown).

6. Claims 1, 5, 13, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Tsutsumikoshi et al. (US 4535869).

Tsutsumikoshi et al. disclose (**re: claims 1 and 13**) a vehicle (Fig 1) with a plurality of wheels and a fender structure therefor (refer Fig 2, items 8 and 9) comprising: (refer fig 1; and note that although only the left side is fully shown the vehicle fenders are considered right-left symmetrical) a right fender portion positionable over a right wheel; a left fender portion associated with the right fender portion and positionable over a left wheel, wherein at least one of

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the right fender portion and the left fender portion includes a support portion (taken as the top periphery extending around the cutout 902 of the rear cover 9, where the seat 10 will be mounted and will bear down on the fender 9; refer col 3, lines 53, 54) designed as a load-bearing surface that is defined at least in part by a top surface of at least one of the left and right fender portions; and (**re: claims 5 and 17**) wherein the right fender portion, the left fender portion and the support portion are integrally formed with one another as a single unit (either of items 8 or 9 as shown particularly in Fig 2).

7. Claims 37, 38, 46, and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Asao et al. (US 5791431).

Asao et al. disclose an all terrain vehicle (Fig 1) comprising: (**re: claim 37**) a main frame (Fig 2; and refer col 3, line 6ff ) that suspends a plurality of wheels (refer col 2, lines 45-48), and a fender structure (Fig 1, the combination of 32, 34, and 36) supported by the main frame, the fender structure having a plurality of built-in raised support portions (fig 1, item 38, and refer col 2, lines 61, 62); and further comprising (**re: claim 38**) a storage compartment (26) positioned within the fender structure (refer Fig 3, and col 5, lines 8-11) and a cover (the unnumbered cap to the compartment 26) sized to cover the storage compartment; and further (**re: claim 46**) wherein the fender structure is a front end portion of the vehicle (combination 32 and the forward fenders 36); and further (**re: claim 47**) wherein the fender structure is a rear end portion of the vehicle (combination 34, and the rearward fenders 36).

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8. Claims 1, 8-10, 13, 20- 22, 25-27, 35-37, 40, 42, 43, 46, and 47 are rejected under 35 U.S.C. 102(e) as being anticipated by Johnson et al. (US 6224134 B1).

Johnson et al. disclose (**re: claims 1, 13, 25, and 37**) an all terrain vehicle with a plurality of wheels, and a fender structure therefor, comprising a main frame that suspends a plurality of wheels; and a fender structure positioned over the wheels and supported by the main frame, a left fender portion associated with the right fender portion and positionable over a left wheel, wherein at least one of the right fender portion and the left fender portion includes a support portion (20) designed as a load-bearing surface that is defined at least in part by a top surface of at least one of the left and right fender portions (as seen in Fig 1), the fender structure having a plurality of built-in raised support portions (refer Fig 3, 4 and associated text, col 2, line 30ff) wherein the raised support portions and the fender structure are formed of a plastic material, and having a bumper (110) supported by the main frame; and further (**re: claim 8**) comprising a mud guard positionable adjacent at least one of the left and right wheels and a floor board extending away from the at least one mud guard (Figs 24-31, and associated text); and further comprising (**re: claim 20**) a mud guard (the forward portion of item 150 shown in Fig 24 serves as a mud guard for the front wheel) positionable adjacent at least one of the left and right wheels and a floor board (Fig 24, item 152) extending away from the at least one mud guard; and wherein (**re: claims 9, 21**) the mud guard and the floor board are formed as a one piece unit (Fig 24, and refer col 7, lines 50-53); and wherein (**re: claims 10, 22**) at least one of the mud guard and the floor board is made of injection molded plastic (refer col 7, lines 50-53); and (**re: claim 26**) the wheels

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are suspended from the main frame, a bumper is supported from the main frame (note the shock absorbers suspending the wheels in Fig 1), and the raised support portions (20, and 60) are supported by the main frame but are not supported by the bumper; and wherein (**re: claim 27**) the plastic material is selected from the group comprising polyethylene, polypropylene and fiberglass-charged polyethylene (refer col 5, lines 44-62); and wherein (**re: claim 35, 47**) the fender structure is a rear end portion of the all terrain vehicle (see Fig 1); and wherein (**re: claims 36, 46**) the fender structure is a front end portion of the all terrain vehicle (Fig 1); and wherein (**re: claim 40**) the fender structure and the support portions are made of plastic selected from the group comprising polyethylene, polypropylene and fiberglass-charged polyethylene (refer col 5, lines 44-62); and further comprising (**re: claim 42**) a mud guard and a floor board integrally formed to the fender structure (Fig. 1); and (**re: claim 43**) the mud guard and the floor board are formed as a single unit (refer Fig 30, and associated text).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 6, 7, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sun (US 5474483).

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As addressed above, Sun discloses all of the features of claim 5 from which claims 6 and 7 depend, and claim 17 from which claims 18 and 19 depend. Sun lacks explicit disclosure of the means of forming the fender structures and the material from which it is made.

However, the examiner takes Official Notice that it is old and well known in the wheeled vehicle manufacturing arts to form various parts of and, indeed, entire bodies of vehicles of the type disclosed in the reference by any one of blow molding or injection molding (**re: claims 6, 18**) and to use materials such as polyethylene, polyurethane, and fiberglass reinforced polyethylene (**re: claims 7, 19**).

Therefore, in the absence of disclosure in the instant application that these features are for any particular purpose or solve any particular problem, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to have formed these parts by injection molding or blow molding of a plastic such as polyethylene, polyurethane, or fiberglass reinforced polyethylene as a design choice to reduce costs of manufacturing and lifetime maintenance and repair of the vehicle based upon engineering and manufacturing tradeoff considerations.

11. Claims 25, and 27-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sun (US 5474483).

a. Sun discloses an all terrain vehicle, as broadly claimed, including (**re: claim 25**) a plurality of wheels (20), the vehicle comprising a fender structure positioned over the wheels (formed by the sides and skirt-like structures at the bottom of the sides), the fender structure

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including a plurality of raised support portions (Fig 2, items 14 and 16); and wherein (re: claim 28) the fender structure and the raised support portions are formed as a one piece unit (as shown particularly in fig 2); and further comprising (re: claim 29) a storage compartment (Fig 3, item 12) formed integrally with the fender structure and the raised support portions; and further comprising (re: claim 30) a cover (40) that is sized to cover the storage compartment; and wherein (re: claim 31) the fender structure includes a central support surface defined by the cover and a lateral support surface (the tops of the sides) on each side of the central support surface; and wherein (re: claim 32) the fender structure includes lateral portions on each side of the storage compartment (the tops of the sides that form the fenders); and wherein (re: claim 33) the fender structure includes at least one cross-over portion (the front and rear transversely extending top surfaces on which the cover is mounted) extending transverse to the lateral portions, the lateral portions and the at least one cross-over portion defining a support plane; and wherein (re: claim 34) the fender structure comprises lateral portions (the sides) and at least one cross-over portion extending transverse to the lateral portions, the lateral portions and the at least one cross-over portion defining a support plane (the plane that the top (40) rests on when mounted to cover the storage compartment); and wherein (re: claim 35) the fender structure is a rear end portion of the all terrain vehicle (as shown); and wherein (re: claim 36) the fender structure is a front end portion of the all terrain vehicle (as shown).

b. Regarding the further limitation of claim 25 wherein the raised support portions and the fender structure are formed of a plastic material, and the limitation of claim 27 wherein

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the plastic material is selected from the group comprising polyethylene, polypropylene and fiberglass-charged polyethylene, the Sun lacks explicit disclosure of the material of which the vehicle is made.

c. However, the examiner takes official notice that it is old and well-known in the toy vehicle manufacturing arts to make the various parts and entire vehicles of the type disclosed by Sun from plastic material and including plastic materials selected from the group comprising polyethylene, polypropylene and fiberglass-charged polyethylene.

d. Therefore, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to have formed the raised support portions and the fender structure of the vehicle taught by Sun of a plastic material selected from the group comprising polyethylene, polypropylene and fiberglass-charged polyethylene.

12. Claims 11, 12, <sup>23</sup><sub>24</sub>, 41, 44, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. (US 6224134).

As discussed above Johnson et al. disclose all of the limitations of claim 8 from which claims 11 and 12 depend, claim 20 from which claim 24 depends, claim 37 from which claim 41 depends and claim 42 from which claims 44 and 45 depend.

Relative to the limitations of claims 11, 12, <sup>23</sup><sub>24</sub> and 24, Johnson et al. further discloses the vehicle mudguard and floor board to be formed of injection molded plastic (re: claims 11 and 12), but lacks explicit disclosure of the material and method of forming the right and left fenders and their connecting support portion as one piece units with the mud guard and floor board (re:

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**claim 11**), in particular, that these and the mud guard (**re: claim 44**) are formed in one piece as a first one piece unit with the fender portions (**re: claims 41 and 44**) and that the left fender portion and the built in support portion are formed as a second one piece unit (**re: claims 12, 24, and 44**), and that (**re: claim 45**) the first one piece unit is made from injection molded plastic and that the second one piece unit is mad of blow-molded plastic.

However, the examiner takes Official Notice that it is old and well-known in the manufacturing arts of the vehicle types of the reference to make various of a motor vehicle's body parts, including mud guards and floor boards, fenders and fender-associated parts by injection molding and/or blow-molding of plastics materials. Moreover, it is old and well-known to be able to make multi-part plastic components in one-piece using these same and similar well-known processes.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to have modified the vehicle of Johnson et al. to include fenders and fender support portions made of injection molded plastic and combined with the mud guards and floor board in one piece as an obvious design choice based upon engineering tradeoffs of manufacturing and lifetime maintenance cost estimates associated with the manufacture and repair of the vehicle over its useful life.

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***Allowable Subject Matter***

13. Claims 3, 4, 15, 16, and 39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*(M) (1)(b) or*  
Claim ~~23 and~~ 26 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Prior Art made of Record***

14. The prior art made of record and not relied upon is considered pertinent to the applicant's disclosure; the prior art of Mizuta teaches an all terrain vehicle with a one-piece mudguard and footrest combined with the fenders; Uphaus teaches a unibody including wheel fenders for a multi wheeled vehicle; Smith teaches a unibody for a toy vehicle that simulates an all terrain vehicle; Boehm et al. teach a single piece body comprising forward left and right associated fenders and a storage compartment with removable access panel lid for a vehicle; Schweser teaches a one-piece body for a beach buggy; Tarahomi teaches vehicle body plastic panels and their method of manufacture from blow molded or injection molded or both together. These references also teach various other structures having features in common with some of the limitations disclosed in the instant application.

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***Conclusion***

15. Any inquiry concerning this or earlier communication(s) from the examiner should be directed to Gerald B. Klebe at 703-305-0578; fax 703-305-0578; 8:00 AM- 4:30 PM ET, Mon.-Fri., or to Supervisory Patent Examiner Brian L. Johnson, Art Unit 3618, at 703-308-0885.

*Gerald B. Klebe*  
gbklebe / AU 3618 / 2 November 2002

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